

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201

Date: JUN 21 2001

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Number:
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for Federal income tax under the provisions of the Internal Revenue Code of 1986 and its Regulations. Based on the information available that you do not qualify for the [REDACTED]

[REDACTED] on of exemption from
section 501(c)(3) of the
Income Tax
we have determined
on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 392, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of Section 6104(c) of the Code.

Sincerely,

Steven Miller

Director, Exempt Organizations

Enclosures: 3

Enclosure I

Facts:

Information in the application indicates that from [redacted] and his family owned and operated [redacted] on [redacted] near [redacted]. It was considered one of the most popular resorts between [redacted], [redacted] and [redacted] and included an ice cream parlor, bathhouse, lunch stand and one of the largest dance halls in the area. Activities included boating, camping, swimming, fishing, picnic outings and dancing.

In [redacted], the [redacted] sold the resort to developers who created the [redacted]. The organization was originally incorporated [redacted], in [redacted]. A previous Board of Directors failed to file the proper reports and pay the proper fees to the State. Consequently, the organization had to file new [redacted] with the [redacted], which was done on [redacted]. The purposes for which the organization was formed are, "Promoting the mutual welfare of the property owners... to own the community area and structures on [redacted]... to make necessary improvements in the said community areas and to own and operate a non-profit water supply system..."

The resort was subdivided into [redacted] property sites. Each property owner is an automatic and mandatory member of the club and is assessed an annual fee of \$[redacted]. The annual fee is the organization's main source of support. A fundraiser in [redacted] which had an attendance of over [redacted] people, raised \$[redacted].

The original structures still standing, and owned by the organization, are the ice cream parlor built in [redacted], the bathhouse, also built in [redacted], and a chimney remnant from one of the outdoor kitchens. The structures have been listed with the [redacted].

[redacted], [redacted]. The ice cream parlor extends over the lake and houses [redacted] historic pictures, dating as far back as [redacted]. The organization has developed a [redacted]-year plan to refurbish both the ice cream parlor and the bathhouse to their originality. Plans include replacing windows, installing a new septic system, fixing the plumbing in both buildings, and putting a new roof on the ice cream parlor. In the description of the project, on page 3 of the document you submitted entitled, [redacted],

[redacted] dated [redacted] you include construction of a long-term water system that will service both the historic buildings and the member residents. The application states you have already begun the first phase of replacing the water system, the roof replacement on the bathhouse, and continual grounds maintenance.

The ice cream parlor is currently used as a clubhouse by the members and is available for use by the members for weddings, receptions, retirement parties, birthday parties, anniversary parties, [REDACTED], [REDACTED], [REDACTED] meetings, annual membership meetings, and pot luck dinners. The bathhouse is currently used by the members as a changing room with bathroom and shower facilities. The facilities are not open to the public, except for one or two fundraising events held in the past year.

Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" to include: relief of the poor and distressed, or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of a signated individuals or the persons who created it.

Section 1.501(c)(3)-1(a)(1) of the Regulations states in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization

fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(a)(2) of the Regulations states the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(4) of the Regulations states an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 447 F.2d 340 (4th Cir. 1973), cert. denied 414 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court concluded that an organization could not confer substantial benefits on disinterested persons and still serve public purposes within the meaning of section 1.501(c)(3)-1(d)(ii) of the Regulations.

In Manning Association v. Commissioner of Internal Revenue, 93 T.C. 596 (1989), the Tax Court held that notwithstanding the existence of truly educational purposes, based largely upon an historic Manning homestead and historic artifacts, the Association's operations were also conducted for the benefit of members of the Manning family, a nonexempt purpose substantial in nature that precluded the Association's qualifying for exemption under Code section 501(c)(3).

In general, an organization that applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular section of the Code under which it has applied.

See Kenner vs. Commissioner, 318 F.2d 632 (7th Cir. 1963), and Cleveland Chiropractic College vs. Commissioner, 312 F.2d 203, 206 (8th Cir. 1963).

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47 (1966), a group of property owners formed a corporation to dredge waterways bordering their properties. The record shows 90 to 95 percent of the shorefront property on the waterways to be dredged was privately owned. The municipal property adjacent to the waterways was part of a park. The park property was not used by the public for ingress or egress of craft, and there was no evidence that it was used for swimming or that swimming was permitted there. Some people used the area for fishing, but such activity appeared to unlawful. If the silt to be dredged could not be deposited in a convenient nearby location, it would be necessary to load the material on barges and transport it by sea to another location at a cost of about six times as much. Therefore, the corporation arranged with the village trustees to have the dredged material deposited in a low-lying area of the municipal park. The Tax Court ruled the corporation's principal, if not sole purpose was to dredge the waterways for the benefit of those persons owning property or living on the shores thereof. Any objective to benefit the general public, if it existed at all was a secondary one. The Tax Court further ruled that contributions to the corporation were not deductible to the donor under section 170 of the Code as a charitable contribution.

Rev. Rul. 75-286, 1975-2 C.B. 210, holds that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the value of its members' property rights, does not qualify for exemption under section 501(c)(3).

Conclusion:

Based on the statement of facts and applicable law, we conclude you are not described in Section 501(c)(3) of the Code. We reached our conclusion for the reasons discussed below:

First, you do not meet the organizational test required for exemption under Section 501(c)(3) of the Code. The purposes for which the organization was formed, as stated in your organizational document, are: "Promoting the mutual welfare of the property owners... to own [redacted] and structures on [redacted]... to make necessary improvements in the said community areas and to own and operate a non-profit water supply system..." The purposes listed in your organizational document are not purposes specified in Section 501(c)(3) of the Code.

secondly, you do not meet the operational test. You indicate that a substantial part of your activity involves installing a new water system that would serve the private residences of the members, as well as, the two historic structures, the clubhouse/ice cream parlor and bathhouse. There is no information from which it can be concluded this activity will further or advance any charitable purpose. It appears the installation of a new water system provides a convenience and a benefit to the homeowners who are not members of a charitable class of persons and as such, constitutes a substantial non-exempt activity.

Finally, you indicate the members of the organization own the clubhouse/ice cream parlor and bathhouse, along with the other common areas. You only allow the public access to the clubhouse on a limited basis, for the sole purpose of raising funds. The funds are used for the facilities, restoration and preservation of the clubhouse/ice cream parlor and bathhouse. These facilities are primarily for the private benefit of the members and any benefit to the public is secondary.